

NOTICE
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2019 IL App (5th) 180595-U

NO. 5-18-0595

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

ALLISON D. EDWARDS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	St. Clair County.
)	
v.)	No. 17-OP-814
)	
DOUGLAS J. SIEMONSMA,)	Honorable
)	Patricia H. Kievlan,
Respondent-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the respondent claims issues of discovery and witness exclusion on appeal that were not raised in his posttrial motion or in his notice of appeal, the issues are forfeited. Where the respondent was represented by counsel in the trial court, we find that those discovery matters were either part of the trial judge’s management of her courtroom or were not properly preserved for appeal because counsel did not make an offer of proof. Where the respondent claims that the trial court was biased against him but his legal counsel did not seek substitution of the judge, we decline to address the merits of this issue. Where the trial court’s order granting the petitioner a stalking no contact order is not contrary to the manifest weight of the evidence, we affirm.

¶ 2 Allison D. Edwards (Edwards) sought an emergency stalking no contact order, which was granted against Douglas J. Siemonsma (Siemonsma). The trial court later

granted a plenary stalking no contact order and ordered Siemonsma to pay \$10,000 in attorney fees to Edwards. Siemonsma appeals from the final order.

¶ 3

BACKGROUND

¶ 4 Siemonsma filed his *pro se* brief in this appeal. Edwards did not file a brief. In order to provide the requisite factual and procedural background for this order necessary for review of the issues Siemonsma raised, we heavily relied upon the common law record, the exhibits used during the trial, and the transcribed trial transcript because Siemonsma's brief was difficult to comprehend and lacked pertinent detail.

¶ 5 Edwards filed for a stalking no contact order against Siemonsma on October 3, 2017. The trial court granted the emergency petition on that same date. In her petition, Edwards alleged that Siemonsma had been seeking contact with her for years over Facebook. She blocked him and eventually had to block his children as he would use their accounts to continue to watch her online activity. In 2016,¹ Siemonsma took a job working at the same place where Edwards worked. From the date that Siemonsma resumed work at the same office, he actively pursued a friendship with Edwards. In September 2017, he began watching her at work; contacted her direct superior with complaints in an effort to get her employment terminated; and began following her when she left work, including on October 3, 2017, as she drove to the St. Clair County courthouse to seek the stalking no contact order. The trial set the hearing on the plenary stalking no contact order for October 24, 2017. Siemonsma was served on October 5, 2017.

¹In Edwards' testimony at trial, she amended this date to 2015.

¶ 6 Siemonsma hired an attorney and filed a motion to set aside the emergency stalking no contact order on the basis that it was entered without giving him a right to be heard and that he had a meritorious defense. On October 17, 2017, the trial court heard Siemonsma's motion, and by agreement of the parties, the stalking no contact order was dismissed *instanter*. In this order, the trial court prohibited Siemonsma from having any contact with Edwards via electronic media or any other method and prohibited Siemonsma from communicating with third parties about Edwards for two years. In essence, the parties agreed to a civil no contact order.

¶ 7 On February 5, 2018, Edwards filed a second verified petition for a stalking no contact order alleging the same grounds as in the first petition, and adding that beginning in November 2017, Siemonsma would loiter in places at work where he knew he could locate her. On December 15, 2017, he drove into her work parking lot and paused behind her car but had to move on because another car pulled behind him. Then Siemonsma exited the parking lot and drove away. Edwards stated that she believes on December 28, 2017, Siemonsma drove down the lengthy lane to her secluded home two times, although she acknowledged that her video of the events was of poor quality. On February 2, 2018, while at a Lowe's parking lot with a coworker, Siemonsma drove by, held up his cell phone presumably to take a photo or video, and then left. The emergency order was entered on February 5, 2018, and the plenary hearing was set for February 21, 2018. Siemonsma was served on February 7, 2018. After filing the petition on a *pro se* basis, Edwards hired an attorney to represent her. Siemonsma hired a different attorney than the one who had represented him in defense of the first petition.

¶ 8 An interim stalking no contact order was entered on February 20, 2018, and the trial court set the next hearing date for March 20, 2018.

¶ 9 On March 15, 2018, Edwards filed a petition for indirect civil contempt or for rule to show cause stating that although the court's November 2017 civil no contact order stated that Siemonsma could not contact third parties to discuss Edwards, he was violating the order. Edwards alleged that Siemonsma had been contacting her employer and coworkers.

¶ 10 Siemonsma filed a request to produce directed to Edwards in March 2018. Edwards objected on the bases that some of the documents requested were irrelevant to this case and did not exist. The trial court sustained those objections on July 10, 2018. Edwards then filed a request to produce directed to Siemonsma and a notice to take a records deposition at his employer's office in April 2018. A notice to take a discovery deposition of Bridget Siemonsma was filed in late May 2018. From the record on appeal, we know that additional written discovery and depositions took place, but the specific notices are not included in the record.

¶ 11 Due to continuances of the hearings on the plenary stalking no contact order, the court entered interim stalking no contact orders in Edwards' favor on March 20, 2018, April 17, 2018, May 14, 2018, June 12, 2018, July 10, 2018, August 13, 2018, September 11, 2018, and October 11, 2018.

¶ 12 On June 12, 2018, the trial court granted the parties 10 days within which to comply with discovery requests, and set all depositions to take place at the courthouse library.

¶ 13 On June 14, 2018, Edwards' attorney filed her affidavit stating that through May 31, 2018, her legal fees were \$3778.95, and that she anticipated Edwards would incur an additional \$2500 before the matter concluded. She amended this affidavit on September 17, 2018, stating that through August 31, 2018, litigation fees associated with this case had reached \$10,412.35, and that she anticipated an additional \$1500 would be incurred through the conclusion of this case. She amended her affidavit again on October 30, 2018, with total fees as of that date at \$13,112.35, and an anticipated additional \$1500 incurred through the conclusion of this case. At trial, the judge examined Edwards' attorney to ascertain the total amount of legal fees charged through the end of the trial. The total as of that date was \$14,722.35.

¶ 14 On June 27, 2018, the trial court entered an order indicating that Siemonsma had requested authorization to send a subpoena to obtain Edwards' phone records. The court denied this request noting that the possibility of harassment through a third party was greater than any evidence he could garner from the records.

¶ 15 On July 10, 2018, the trial court entered its order finding that Siemonsma could contact Air Force government officials for the purpose of obtaining information regarding his security clearance and ability to return to on-base employment, but barred him from referencing Edwards' name with any of these contacts, the violation of which could result in the issuance of sanctions.

¶ 16 On August 8, 2018, Edwards sent her responses to Siemonsma's discovery requests. She also filed a motion *in limine* seeking to bar Siemonsma from attempting to introduce any evidence or offer testimony concerning her work performance and alleged

extramarital affairs.² She also asked the court to bar Siemonsma from calling any of her coworkers as witnesses at trial. On August 14, 2018, the trial court entered its order barring Siemonsma from introducing the following: (1) any testimony or evidence about Edwards' work performance; (2) any testimony or evidence about Edwards' alleged extramarital affairs; (3) any testimony from Edwards' coworkers about extramarital affairs except if they had any knowledge about the relationship between Siemonsma and Edwards; and (4) any testimony or evidence as to Edwards' marriage.

¶ 17 On November 2, 2018, the trial court held its hearing. Edwards testified and her attorney called three other witnesses. Siemonsma did not testify and did not call any witnesses.

¶ 18 John Samson testified that he is Edwards' coworker at Scott Air Force Base. He had known Edwards for a number of years as a friend and then as his coworker. He knew Siemonsma only as someone else who worked there. He was aware of the stalking no contact order entered against Siemonsma. He testified about a day when he needed to meet with Edwards, his supervisor, about problems he was having with a civilian employee. He did not believe that the matter should be discussed at work, and so they agreed to meet across from Southwestern Illinois College in Belleville at the Lowe's store parking lot. While there, he saw Siemonsma driving through the parking lot. On four or five other occasions, he witnessed Siemonsma driving down his home street.

²During the discovery deposition of Bridget Siemonsma, the respondent's wife, she alleged that her husband had been having an extramarital affair with Edwards. During a discovery deposition of John Samson, one of Edwards' coworkers, defense questioning inferred that Edwards was having an extramarital affair with Samson.

Siemonsma did not live near his neighborhood. On one occasion, he captured video of Siemonsma driving through his neighborhood.

¶ 19 Andrew Daub testified that he also works at Scott Air Force Base and knows both Edwards and Siemonsma as fellow workers. He is a security officer in the area where Edwards works, and Edwards first spoke to him approximately one year before in late 2017 about Siemonsma. She expressed concern over his stalking and harassing behavior. Daub explained that unless there was some sort of an order of protection, based upon her allegations at that time there was not much that they could do. Upon entry of the stalking no contact order, Daub was then able to sit down with Siemonsma's employer. Daub conducted a risk assessment with Siemonsma to get his agreement to abide by the terms of the stalking no contact order. Siemonsma was removed from the direct location he was working and his badge was downgraded to prevent access to certain areas. In terms of seeking alternate employment at Scott, Siemonsma had the ability to do so but would not be able to be in the same building as Edwards pursuant to the court's order.

¶ 20 Bryan Edwards, the husband of Allison Edwards, testified that he and Siemonsma used to work together. They first met when both were working at Scott Air Force Base in October 2010. He worked with Siemonsma for three to four years until Siemonsma retired. Siemonsma came back to work in the same building in 2015 to 2016 until August 2017, when Edwards stopped working there. Starting in September 2017, he began receiving emails from a "Mitchell Hayes" who claimed to have information about his wife who planned to divorce him. One week before the "Mitchell Hayes" emails started, Siemonsma had contacted him to obtain his email address. At the time Edwards did not

think it was odd that Siemonsma asked for his email address because Edwards was looking for alternate employment, and he had been contacted by several former coworkers about possible jobs. More emails and text messages followed. Later he received a telephone call from “Mitchell Hayes” claiming the same information about his wife. After the call ended, he realized that he had recognized the voice, and that Siemonsma was “Mitchell Hayes.” He testified that his wife had never expressed concerns about Siemonsma until she obtained the first emergency order.

¶ 21 Allison Edwards testified next at the hearing. She had worked for different civil contractors at Scott Air Force Base since 2010. She and Siemonsma worked in the same building until he retired from the military. He returned to work in the same building as a civilian employee in 2015. They saw each other on a daily basis because of the layout of the work space. Shortly after he resumed work at the base, Edwards repeatedly told Siemonsma to not bother her while she was working. He then began leaving voicemails. She found Siemonsma to be simply irritating until a date in late September 2017 when she realized that his behavior was more problematic. Siemonsma began staring at her on a fairly nonstop basis. She described his behavior as predatory. Then she received a phone call from her boss saying that someone had been contacting them with complaints about her—that she was racist and that she was having an affair with an employee she supervised. Then her husband began receiving emails, text messages, and a telephone call from “Mitchell Hayes.” Edwards testified about the day when Siemonsma followed her from the base as she was heading to the courthouse in Belleville, and about the evasive maneuvers she attempted to get away from him. She also testified about the Lowe’s

parking lot meeting with Samson, and how she saw Siemonsma driving around the parking lot and then departing. Edwards testified that her purpose in filing for the stalking no contact order was to get Siemonsma to leave her and her family alone.

¶ 22 At the conclusion of the hearing, the trial court entered its plenary stalking no contact order on November 2, 2018, in favor of Edwards. A corrected order dated November 9, 2018, is also in the court file. The court issued an order that Siemonsma must pay Edwards \$10,000 in attorney fees.

¶ 23 Siemonsma's attorney was allowed to withdraw in this case after the trial, and Siemonsma filed a *pro se* motion to reconsider on November 26, 2018. He filed the motion to reconsider because the plenary order prohibited him from being in the building at Scott Air Force Base where Edwards worked and that a new job required his access to that building. He alleged that he had lost his security clearance and that he had taken a job headquartered in New York that required onsite work at Scott Air Force Base for meetings between 2 and 12 hours per month. Without the security clearance he formerly had, Siemonsma would not be able to access the building without going to the security desk. Going to the security desk meant that he would have to have an escort with him for the duration of these meetings on property. He stated that the meetings would be on the first floor of the building, while Edwards worked on the second floor. Finally, he alleged that Edwards would not be attending these meetings. Siemonsma did not include any procedural or other substantive issues in his motion to reconsider the plenary stalking no contact order.

¶ 24 On December 7, 2018, Edwards filed her petition for rehearing seeking an additional award of attorney fees over the \$10,000 previously ordered.

¶ 25 On December 17, 2018, the trial court denied both motions.

¶ 26 ANALYSIS

¶ 27 Siemonsma timely appeals from the trial court's order granting the plenary stalking no contact order against him on November 2, 2018. In his notice of appeal, he specifically requests that this court vacate the trial court's judgment. He raises no other issues on appeal.

¶ 28 Issues not raised in the notice of appeal are forfeited. *In re Marriage of Goesel*, 2017 IL 122046, ¶ 12, 102 N.E.3d 230; *City of Chicago v. Alexander*, 2017 IL 120350, ¶ 79, 89 N.E.3d 707. Additionally, issues not raised in a posttrial motion are forfeited for review on appeal. *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14, 43 N.E.3d 1005. The purpose of this rule is to encourage parties to raise their concerns in the trial courts so that courts have an opportunity to correct their errors. *Id.*

¶ 29 In his brief on appeal, Siemonsma does not directly allege that the plenary order was erroneously entered. Instead he argues a series of discovery issues: continuing the hearing dates, granting Edwards' motion *in limine* barring him from having certain witnesses testify at the hearing, not enforcing deadlines for Edwards to produce requested documents, not enforcing the court's own order on discovery deadlines, not enforcing a subpoena for Edwards to be deposed, and rejecting his discovery request to review

Edwards' phone records. Alternatively, Siemonsma argues that the trial court judge was biased and/or heavy-handed against him as detailed by her various rulings and verdict.

¶ 30 We first respond to Siemonsma's alleged discovery issues. Siemonsma did not raise these issues in his posttrial motion or in his notice of appeal, and so he forfeits the issues. *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 14; *Marriage of Goesel*, 2017 IL 122046, ¶ 12.

¶ 31 Even though Siemonsma has forfeited these issues, we note that a trial court maintains broad discretion to oversee his or her courtroom and in maintaining the progress of a case. *People v. Coleman*, 183 Ill. 2d 366, 387, 701 N.E.2d 1063, 1074 (1998). A trial court's decision to exclude evidence and to limit discovery is reviewed for an abuse of discretion. *Swick v. Liautaud*, 169 Ill. 2d 504, 521, 662 N.E.2d 1238, 1246 (1996) (exclusion of evidence); *People v. Williams*, 209 Ill. 2d 227, 234, 807 N.E.2d 448, 453 (2004) (limiting discovery).

¶ 32 Here, the record contains no discovery-related motions or Rule 201(k) (Ill. S. Ct. R. 201(k) (eff. June 1, 1995)) efforts by Siemonsma to enforce discovery requests. Furthermore, the record does not contain the discovery responses because the local court rules for the Twentieth Judicial Circuit provide that: "[n]o discovery may be filed with the clerk of the circuit court except by order of court." 20th Judicial Cir. Ct. Rs. Requests, Notices & Applications, Request for Production of Documents F(1)(a) (Apr. 2017). The appellant bears the responsibility for preparing an adequate and complete record on appeal. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248,

1251 (2003). In the absence of a complete record on appeal, we presume that the trial court's orders (or lack of orders) were appropriate. *Id.*

¶ 33 Siemonsma appears to argue that the trial court should have *sua sponte* entered orders directing Edwards to produce documents and to force Edwards to appear for a deposition. Siemonsma had an attorney representing him throughout this process who could have easily filed the required discovery-related motions. Moreover, trial courts are not mandated to enforce discovery matters not brought to their attention. Finally, as the record does not contain the discovery that Edwards produced to Siemonsma, we have no way to know whether she did or did not produce the requested evidence. Accordingly, this argument fails.

¶ 34 Siemonsma next argues that the trial court should not have barred witnesses that he planned to call to testify at the hearing. Siemonsma was represented by counsel and they argued this point to the trial court, but the trial court was not convinced. A trial court has broad discretion in all matters related to management of the courtroom and the assigned cases. *Coleman*, 183 Ill. 2d at 387. Further, if a trial court refuses evidence, there is no appealable issue unless the party seeking to introduce that evidence makes a formal offer of proof. *Volvo of America Corp. v. Gibson*, 83 Ill. App. 3d 487, 491, 404 N.E.2d 406, 409 (1980). “The purpose of an offer of proof is to inform the trial court, opposing counsel, and a court of review of the nature and substance of the evidence sought to be introduced.” *Id.* A formal offer of proof is required unless it is apparent that the trial court clearly was aware and “understood the nature and character of the evidence sought to be introduced.” *Id.* Here, there is nothing in the record indicating the identity of

the witnesses proposed or about the subject matter of their proposed testimony. Accordingly, the issue was not preserved for our review.

¶ 35 Siemonsma finally argues that the trial court judge was biased against him. As stated above, Siemonsma was represented by counsel. He had the right to seek a substitution of the judge pursuant to section 2-1001 of the Code of Civil Procedure (735 ILCS 5/2-1001 (West 2016)). He did not do so. Trial judges are presumably impartial. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31, 958 N.E.2d 647. We will not address this issue because Siemonsma did not utilize his available procedural rights in the trial court and raises the issue for the first time in this appeal.

¶ 36 From Siemonsma's notice of appeal, he appealed from the trial court's plenary stalking no contact order. He does not raise any arguments on appeal directed to the propriety of the trial court's stalking no contact order, but he does ask us to vacate the order.

¶ 37 On review of a trial court's determination that an order should issue pursuant to the Stalking No Contact Order Act (740 ILCS 21/1 *et seq.* (West 2016)), we will not overturn that decision unless that conclusion is contrary to the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 348-50, 860 N.E.2d 240, 243-45 (2006) (standard of review of issuance of a plenary order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 is manifest weight). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Id.* at 350.

¶ 38 The purpose of the Stalking No Contact Order Act (Act) is to provide “[a]ll stalking victims *** a civil remedy requiring the offenders [to] stay away from the victims and third parties.” 740 ILCS 21/5 (West 2016). Stalking does not happen with a single act, but instead occurs with a “course of conduct.” *Id.*

¶ 39 Section 10 of the Act defines several terms used in its provisions. *Id.* § 10. The Act defines stalking as “engaging in a course of conduct directed at a specific person, and [the offender] knows or should know that this course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress.” *Id.* Stalking behavior is described as including: “following a person, conducting surveillance of the person, appearing at the person’s home, work or school, making unwanted phone calls, sending unwanted emails or text messages, leaving objects for the person, vandalizing the person’s property, or injuring a pet.” *Id.* § 5. An exercise of the right to free speech or assembly is expressly excluded as meeting the definition of “stalking.” *Id.* § 10. Speech or assembly not protected by section 10 of the Act involves threats of violence or intimidation. *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶ 20, 993 N.E.2d 594.

¶ 40 The definition of stalking requires a “course of conduct.” 740 ILCS 21/5 (West 2016). The term “course of conduct” is defined as follows:

“2 or more acts, including but not limited to acts in which a respondent directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other contact, or interferes with or damages a person’s property or pet. A course of conduct may include contact via electronic communications.” *Id.* § 10.

¶ 41 A victim can seek a stalking no contact order by filing a verified petition against the alleged offender that claims that he or she has been the victim of stalking activities. *Id.* §§ 20, 25. The Illinois rules of civil procedure apply to all pleadings, and the standard of proof at a hearing is a preponderance of the evidence. *Id.* § 30(a).

¶ 42 Having reviewed the record on appeal, Edwards alleged an undisputed series of actions taken by Siemonsma that constituted a “course of conduct” directed to her, to her husband, and to her employer and coworkers. We conclude that Edwards proved by a preponderance of the evidence that Siemonsma was stalking her. We find the trial court’s order is not contrary to the manifest weight of the evidence.

¶ 43 **CONCLUSION**

¶ 44 For the reasons stated in this order, we affirm the St. Clair County circuit court’s plenary stalking no contact order.

¶ 45 Affirmed.